

Bill B.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 14, 2004

Dawn Gallagher, Commissioner
Maine Department of Environmental Protection
#17 State House Station
Augusta, Maine 04333-0017

SUBJECT: EPA Review of Chapters 227, 245, and 317 Water Quality Standard Revisions

Dear Commissioner Gallagher:

The Environmental Protection Agency (EPA) has completed its review of Chapters 227, 245, and 317, as required by 33 U.S.C. 1313(c).

Chapter	Title
227	An Act to List Agriculture as a Designated Use in Water Quality Standards
245	An Act to Amend Certain Laws Administered by the Department of Environmental Protection
317	An Act to Reclassify Certain Waters of the State

These legislative chapters revised the surface water quality standards administered by the Department of Environmental Protection's (DEP's) Bureau of Land & Water Quality, and were certified by Maine's Assistant Attorney General in the Natural Resources Division on December 17, 2003 as having been duly adopted pursuant to state law. EPA is continuing its review of Chapter 418 and the other chapters from the Department's August 26, 2003 submittal of legislation enacted by the First Regular Session of the 121st Legislature.

First, I thank you and your staff for an impressive effort with regard to the upgrading of use classifications for numerous water body segments. In many cases waters were reclassified to Class AA or SA, Maine's most protective classifications for freshwater and saltwater respectively. These reclassifications will significantly strengthen Maine's ability to protect its waters and further progress towards achieving the objectives of the Clean Water Act (CWA).

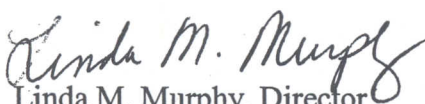
I hereby approve the revised water quality standards in Chapters 227 and 317. Chapter 227 adds a designated use to Maine's classifications, and Chapter 317 upgrades the classifications of numerous water segments. This approval is made pursuant to Section 303(c)(2) of the Clean Water Act (CWA) and 40 C.F.R. Part 131, and is based on my determination that the approved revisions are consistent with the requirements of Section 303 of the Act. In making this approval, we have a few comments concerning Chapters 227 and 317. (see attachment A).

EPA is not taking action at this time on the water quality standards revision in Chapter 245, *An Act to Amend Certain Laws Administered by the Department of Environmental Protection, Sec. 7.38 MRSA Sec. 464, sub-Sec. 3, Paragraph B*. This revision changes the frequency with which the Board will hold public hearings for the purpose of reviewing Maine's water quality standards (and revising where appropriate) from at least once every three years, to at least once every four years. Federal regulations at 40 CFR §131.20 require the frequency of state water quality standards reviews, and revisions as necessary, to be at least once every three years. In his letter of December 17, 2003, Maine's Assistant Attorney General indicated that this change to a four-year review frequency in Section 7 of Chapter 245 appears to be in conflict with EPA's regulations. We understand, based on verbal confirmation by DEP staff, and the State of Maine Legislature website, that with the passage of LD 1655 the three-year period of review in 38 MRSA Sec. 464, sub-§3, Paragraph B has recently been restored to ensure consistency with the federal regulations. As of March 16, 2004, Chapter 551 (LD 1655) was signed by the Governor and will be effective 90 days after the end of the current legislative session.

EPA's approval of Maine's surface water standards revisions does not extend to waters that are within Indian territories and lands. EPA is taking no action to approve or disapprove the State's standards revisions with respect to those waters at this time. EPA will retain responsibility under Section 303(d) for those waters.

My staff and I look forward to continued cooperation with the ME DEP in exercising our shared responsibility of implementing the water quality standard requirements under the CWA. If you have any questions on these issues, please contact Steve Silva, Director of EPA New England Maine Program, at 617-918-1561.

Sincerely,


Linda M. Murphy, Director
Office of Ecosystem Protection

Enclosure

cc: Andrew Fisk, ME DEP
David Courtemanch, ME DEP
Brian Kavanah, ME DEP
Vernon Lang, USF&WS
Mary Colligan, NMFS
Peter Colossi, NMFS
Edward Hanlon, EPA HQ

Comments on Chapters for which Water Quality Standards Revisions are Approved

1. Chapter 227. *An Act to List Agriculture as a Designated Use in Water Quality Standards.*

Chapter 227 adds agriculture as a designated use to Maine's freshwater use classifications (AA, A, B, C, GPA). This revision is consistent with Section 303(c)(2)(A) of the Clean Water Act and 40 CFR §131.10(a) which explicitly list agriculture as a use that states are to consider when designating uses. EPA would like to point out that listing agriculture as a designated use in water quality standards sets the goal that the water is to be of sufficient quality to support agricultural uses of that water. Any determination to allow the withdrawal of water for agriculture should only be made after full consideration of the existing uses and other designated uses of the waterbody, the applicable physical, chemical, and biological criteria, and Maine's antidegradation provisions. For example, Class AA waters are defined as "free flowing and natural" and are recognized by Maine as Outstanding National Resource Waters (ONRW).

2. Chapter 317 *An Act to Reclassify Certain Waters of the State*

Chapter 317 upgrades the use classification for numerous water body segments. These revisions are consistent with the CWA because in all cases the waters' designated use goals continue to be consistent with the goal uses of the CWA at section 101(a)(2), and are upgraded to subcategories of those uses that require more stringent criteria.

Provisions in Chapter 317, Sec. 6. 38 MRSA §467, sub-§4 A.(13), concerning license limits for residual chlorine and bacteria are not water quality standards, and therefore are not subject to EPA action under Section 303(c) of the Act.